

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RICKY TYRONE FOSTER,

Plaintiff,

v.

KAWEAH DELTA MEDICAL CENTER
and KENNY DERKANG LEE,

Defendants.

Case No. 1:21-cv-01044 JLT HBK (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN FULL

(Doc. 48)

The magistrate judge issued Findings and Recommendations in this matter, recommending that the Court grant Defendants' motion for summary judgment and deny Plaintiff's motion for summary judgment because there is no genuine dispute of material fact that Defendants were not deliberately indifferent to Plaintiff's serious medical condition. (*See* Doc. 48.) In the same order, the magistrate judge granted Defendants' request for judicial notice and denied Plaintiff's request for judicial notice. On June 20, 2023, Plaintiff filed objections to both the Findings and Recommendations and the order denying his request for judicial notice. (*See* Doc. 51).

According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

As the magistrate judge correctly noted, the undisputed facts reflect that Defendant Lee

provided extensive medical care for Plaintiff's identified injuries, and there is no indication that he was deliberately indifferent to Plaintiff's serious medical need. (Doc. 48 at 20.) Plaintiff contends that an Exhibit C he purportedly attached to his June 27, 2022 Ex Parte Motion for Clarification contains medical records and second opinions that refute Defendants' account, and that the magistrate judge "ignored deliberately" this evidence. (Doc. 51 at 2-4.) The Court notes that Plaintiff's Ex Parte Motion contains two exhibits titled "Exhibit C." (*See* Doc. 44 at 24-52.) The first Exhibit C includes, *inter alia*, a one-page document titled "CPOE Order Session Summary Report," but no other medical records. (Doc. 44 at 34.) The second Exhibit C, as the magistrate judge noted, contains a copy of a grievance he filed related to law library access at CSP Corcoran, and the Office of Grievances' response. (*Id.* at 49-52.) Neither exhibit contains medical records that dispute the magistrate judge's finding that Defendant Lee was not deliberately indifferent to Plaintiff's serious medical needs.

Plaintiff does not otherwise articulate a basis for rejecting the magistrate judge's findings as to Dr. Lee. Because the Court agrees with the magistrate judge's finding that summary judgment is appropriate as to Plaintiff's claim against Dr. Lee, there is no basis for a *Monell* claim against Defendant Kaweah Delta Medical Center. *Scott v. Henrich*, 39 F.3d 912, 916 (9th Cir. 1994) (holding that "municipal defendants cannot be held liable because no constitutional violation occurred"); *see also City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (finding if no individual claim against police officer remains, then no liability on city and the Police Commission). Accordingly, the objections fail to establish a basis for rejecting the magistrate judge's findings and recommendations. Thus, the Court **ORDERS**:

1. The Findings and Recommendations, issued on May 4, 2023 (Doc. 48), are **ADOPTED IN FULL**.
2. The Clerk of Court shall terminate any pending motions, close this case, and enter judgment against Plaintiff.

IT IS SO ORDERED.

Dated: **September 22, 2023**


UNITED STATES DISTRICT JUDGE